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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 79-5949

JOHN GREGORY WATKINS — PETITIONER

V.

DONALD E. BORDENKIRCHER, WARDEN — RESPONDENT

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ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

STEVEN L. BESHEAR
ATTORNEY GENERAL

VICTOR FOX
ASSISTANT ATTORNEY GENERAL
Capitol Building
Frankfort, Kentucky 40601

COUNSEL FOR RESPONDENT

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SUPREME COURT OF THE UNITED STATES

No. 79-5949

JOHN GREGORY WATKINS — PETITIONER

V.

DONALD E. BORDENKIRCHER, WARDEN — RESPONDENT

BRIEF FOR RESPONDENT IN OPPOSITION

The respondent, by counsel, respectfully requests this Court deny the petition for writ of certiorari seeking review of the Sixth Circuit's opinion in this case. That opinion is reported at 608 F.2d 247.

JURISDICTION

Petitioner invokes this Court's jurisdiction under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

I. DOES CONSTITUTIONAL DUE PROCESS OF LAW REQUIRE A STATE TRIAL COURT TO DETERMINE THE RELIABILITY OF IDENTIFICATION EVIDENCE IN AN IN CAMERA HEARING?

II. DID CLOSING ARGUMENT OF THE PROSECUTOR DEPRIVE PETITIONER OF A FAIR AND IMPARTIAL TRIAL?

STATEMENT OF THE CASE

Petitioner's statement of the case is substantially correct. Additional material facts and corrections, if necessary, will be set out in the arguments which follow.

REASONS WHY THE WRIT SHOULD BE DENIED

I. THE ALLEGEDLY CONFLICTING DECISIONS ARE DISTINGUISHABLE ON THE LAW.

The petitioner asks that his petition be granted because of an alleged conflict between the various circuit courts of appeal. The case of United States v. Driber, 546 F.2d 18 (3rd Cir. 1976) and the authority relied on therein was based on the supervisory power and not on the requirements of due process. There is no conflict between the circuit courts of appeal nor can petitioner show an actual conflict.

The court below considered and relied on the decisions in Simmons v. United States, 390 U.S. 377 (1968), Neil v. Biggers, 409 U.S. 188 (1972), and Manson v. Brathwaite, 432 U.S. 98 (1977). Petitioner has not shown that the decision below is contrary to the Court's position in these cases.

II. ONLY A QUESTION OF EVIDENCE AND FACTUAL FINDINGS IS INVOLVED AND THE ISSUE IS NOT IMPORTANT ENOUGH TO WARRANT REVIEW.

The court below, while finding the prosecutor's remarks improper, concluded that the prosecutor's remarks were not so pervasive nor so prejudicial as to deny due process. The district court in its memorandum opinion stated "...the petitioner has not met his burden of showing that the remarks of the prosecutor so infected the trial with unfairness as to make the resulting conviction a denial of due process." (Appendix p. 16).

The evidence of the case and the factual findings form the basis of the opinion below. It is manifest from this that the petition does not present a substantial federal question.

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

STEVEN L. BESHEAR
ATTORNEY GENERAL

Victor Fox

VICTOR FOX
ASSISTANT ATTORNEY GENERAL
Capitol Building
Frankfort, Kentucky 40601

COUNSEL FOR RESPONDENT